No. 8475

Supreme Court of Illinois

Easom

vs.

Chapman et al

71641 7

(1) Of the March Term of the Williamson Circuit Court 1857

Daniel Chapman
vs
Abner Eason
William Eason
& Wesley Shannon

The Clerk of the Circuit Court will please issue Summons here in returnable To the above Term

Carder & Lawton &
W Allen atty for Plaintiff

State of Illinois
Williamson County } ss The people of the State of Illinois To the Sheriff of Said County Greeting
We Command you to Summon Absalom Eason William Eason and Wesley Shannon if to be found in your County to appear before the Circuit Court of Said County on the 1st day of the next Term thereof to be holden at the Court house in Marion on the fifth Monday in the month of March next to Answer Daniel Chapman in a plea of Trespass vi et Armis to his damage of 2000, dollars as is alledged and here of make due return to our Said Court as the Law directs

Witness G W Goddard Clerk of our Said Court and the Judicial Seal there of at Marion this 2 day of February A D 1857

G W Goddard Clerk

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State of Illinois } March Term 1857
Williamson County } Williamson Circuit Court

Daniel Chapman the Plaintiff in this Suit Complains of Abner Eason, William Eason, and Wisley Shannon the defendants in this Suit being in Custody &c of a plea of Trespass on personal property For that whereas the Said defendants on the 22d day of December 1856 with force and Arms, to wit at the County and State aforesaid Shot off and discharged a certain Gun then and there Loaded with Gunpowder and ball at and against a certain Roan Stallion horse of the Said plaintiffs of Great value to wit of the value of $2000,00, and thereby and there with, then and there so greatly hurt and wounded the Said horse, that by reason there of the Said horse being of the value aforesaid, afterwards to wit on the day of december 1856 died, to wit at the County and State aforesaid

2d Count

And also for that the Said defendants on the day and year aforesaid with force and arms &c to wit at the County and State aforesaid Shot off and discharged a certain Gun then and there loaded with gunpowder and ball at and against a certain other Roan Stallion horse of the Said plaintiff of Great value to wit, of the value of $2100,00 and also then and there with force and arms Greatly beat maimed hurt & wounded the Said horse and thereby then and there so greatly Shot, beat, hurt, wounded maimed the Said horse being of the value aforesaid afterwards to wit on the day and year aforesaid was Greatly Injured and rendered wholly valueless to wit at the County

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and State (3)
aforesaid and other wrongs to the said plaintiff then and there did to the great damage of the said [illegible] against the peace and dignity of the people of the State of Illinois Wherefore the said plaintiff saith that is injured & hath sustained to the amount of $2000.00 and therefore he brings his suit

Corder & Lauder
Atty for Plaintiff

Daniel Chapman
vs
Toner Eason & Eloe } Trespass

And now the said defendants comes by their Atty Logan & McHaney and defends the wrong and injury when &c and says that they are not guilty of said supposed ~~off~~ Trespass above laid to their charge, or any or either them in manner and form as the said plaintiff hath above thereof complained against them And of this they put themselves upon the country &c

And the plaintiff doth the like
Corder, Lauder & Allen
Attys for Pltff

Logan & McHaney
Atty for Deft.

4 Pleas before the Hon William K Parrish judge of the third judicial circuit and presiding judge of the circuit Court within and for the County of Williamson and State of Illinois on the 3 day of April in the year of our Lord one thousand eight hundred and fifty seven

Be it remembered that heretofore to wit on the first day of April AD 1857 in a certain cause in said Court depending wherein Daniel Chapman is plaintiff and Abner Eason William Eason & ~~William~~ Wesley Shadowen is defendants the following order was made and Entered of record to wit

Daniel Chapman
vs } Trespass on personal property
Abner Eason
William Eason &
Wesley Shadowen

And now on this day Come the plaintiff by his Attorney and asks leave to open depositions

And afterwards to wit on the day and year first afore said to wit on the 3d day of April in the year of our Lord one thousand Eight hundred and fifty Seven the following order was made and Entered of record in said cause to wit

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5 Daniel Chapman

vs

Abner Eason William Eason and Wesley Shadewen } Trespass in personal property

And now on this day come the defendant by Logan their Attorney and Excepts to the depositions

And afterwards to wit and on the day year first aforesaid to wit on the 3d day of April AD 1857 the following order was made and Entered of record in Said Cause to wit

Daniel Chapman

vs

Abner Eason William Eason and Wesley Shadewen } Trespass in personal property

And now on this day come the defendant by Logan their Attorney and offers a demurrer to plaintiffs declaration which is overruled by the Court

And afterwards to wit on the day and year first aforesaid to wit on the 3d day of April AD 1857 The following order was made and Entered of record to wit

Daniel Chapman

vs

Abner Eason William Eason and Wesley Shadewen } Trespass in personal property

And now on this day Came on the cause to be heard and the Court

[illegible]

after being fully advised of and concerning the premises It is considered by the Court that the Exceptions to the depositions be Suppressed

And afterwards to wit on the day first afore said to wit on the 3d day of April A D 1857 the following order was made and Entered of record to wit

Daniel Chapman
vs
Abner Eason William Eason and Wesley Shannon } Trespass in personal property

And now on this day comes the defendant Abner Eason and makes application for a change of venue predicated upon petition and affidavit of the said defendant Whereupon It is considered by the Court that the venue be changed to Franklin County. And that the Clerk make up the record and transmit to the Clerk of the Circuit Court of Franklin County

State of Illinois
Williamson County } I George W Goddard Clerk of the Circuit Court within and for said County, State, do hereby certify that the foregoing is truly copied from the records of my office and the same contains a true and perfect transcript of the proceedings of record in my office in said cause and that the accompanying papers marked A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, Fifty four in number

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7 On the original files in and appertaining to said cause

In testimony whereof I have hereunto set my hand and affixed the seal of said court at office in Marion this July 13th A D 1857

Geo W Goodman
Clerk

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8 Please before the Hon William K Parrish judge of the third judicial Circuit and presiding judge of the circuit court with in and for the County of Franklin and State of Illinois on the Eleventh day of September A D 1857

Be it remembered that on the 11th day of September A D 1857 in a certain Cause in Said Court depending where in Daniel Chapman is plaintiff and Abner Eason William Eason and Wesley Shadowen is defendants The Following was made and Entered of record to wit

Daniel Chapman
vs
Abner Eason William Eason and Wesley Shadowen } Trespass in personal property

And now on this 11th day of Septem=ber A D 1857 this Cause Came on to be heard and the parties by their attorneys Wm J Allen Esqr for the plaintiff as well as A D Duff Esqr for the defendant Where upon Came the jurors of the jury to wit Adam Clem C J Scruggs Thomas B Dunnis Isaac Dillon Sr Jefferson Whittington Richard Pierce Robert Page Gasaway Elkins William Ramsey Lewis L Webb James K Browning H J Tulier who being Elected tried and Sworn upon their oaths do Say we the jury find the defendant Guilty and assess the plaintiff damages at Five Hundred dollars Whereupon the defend=ants by their Attorney Enters a motion for a new trial and in arrest of judgment &c

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Daniel Chapman
vs
Abner Eason
William Eason
& John H Shadowen

Trespass

In Circuit Court of Tumbolton
of Tumbolton County State of
Illinoise 1857

Be it remembered that on the trial of the above Styled cause the Plaintiff Phillips introduced as a witness Pesly Pike who Stated on oath that he was at the plaintiff Chapmans the night the horse was shot it was the night of monday before Christmas day of the year 1856 went to bed at usual bed time and had known the horse for two years past he was a very large roan horse and a Stallion witness saw horse about dark saw him last in Chapmans Stable; the same night he got his leg broke
The lot fence was good enough to keep the horse safe He ran in the lot loose
The Stable door was left open and he could run in and out of the Stable in the lot
Saw horse at dark in good order and saw him at day break next morning in the yard a few steps from the door of the dwelling house outside of horse lot Got him from the house to the Stable lot the gate of the Stable lot was open next morning and the yard fence was down so that a horse could step over it into the yard fence round Stable lot was Staked and ridered night before on Examination found the horses leg was broken a little above the knee joint

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on inside of leg there was a little round hole into which he witness could put his little finger — John Humphrey and John Chapman were there when witness discovered him first. The point of hoof could barely touch the ground. The fence around the horse lot was not down The Gate opened horse lot side the house lot. When they went from the horse lot at night they shut gate. it was a large Gate and had a big latch to it latch went in to the post and had to raise the gate to get it open. thinks a horse could not have opened it. Abner Eason lived about one mile off in a South of East direction from Chapmans and come there next morning after the horses leg was broken

Cross Examination by Defendants

States that there were other horses in side the cornfield adjacent ~~to the~~ house yard, the fence between the field and house yard being down so that a person could step it On that night and he remained awake untill about 11 Oclock at night and heard horses squealing as if they were fighting. had two dogs about the house tolerable watchful dogs lay in side the house lot and witness did not hear a gun nor hear the dogs Bark that night There was one large bay horse in the field that had a shoe on of his hind feet. Eason and Chapman were on friendly terms Abner Eason was there next morning told witness he had come ~~he had come~~ to hunt a heifer of his that had strayed off witness pointed over the creek and showed him where his heifer was and told him he thought he could find the other cattle over there witness did not ~~[illegible]~~ suspect Eason at that time. heard Chapman say the next morning that he supposed

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the Stallion had been Kicked by the bay horse

2d witness John Murphy — another witness on behalf plff
Stated that he knew the horse and that he was
a sure foal getter was four years old past Saw
him the next morning after he was hurt and
worked with him John Chapman was there. The leg
was broke off above the knee cap he was ambitious
that morning and fought considerably when they
working on him but when not hurt was a quiet good
conditioned horse. There was a little hole through the
Skin on the inside of the right fore leg a little above the
knee the bone was broken and shattered and the leg swung
backwards and forwards: thought the horse was Shot
from the beginning I put my finger in the hole to the
2 joint the hole did not come through the out side of the leg and for that
reason said nothing about it at that time
I saw him every day till he died and helped dress his
wounded leg was splintered and bandaged and the
horse was swung and every thing done to heal him that
could be he was no better than a dead horse on the
morning after he was hurt. he at ~~that time~~ first
thought the horse was shot but there being no hole
on the outside of the leg said nothing about it
that time There was Something like bone and
marrow on the bandages The horse lived
Several days did not see him Killed
Could ~~not~~ do nothing with him to Save him
was ~~a~~ good conditioned before he got hurt was
a fat horse and worth $500 at a low estimate
Cross-Exd — States that he did not See the bul-
-let put in his leg If there had been a hole on
the out side would not have hesitated a moment
at the time horse was Shot — was on Christmas

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morning or morning before that Witness was there
Presly Pike — John Chapman, old man Wall
& son — were there same morning
after he was shot — was a very ambitious horse
was shot through the right leg above the knee
cap did not probe the full depth of the wound
that morning — next morning the hole went
straight in and could not put his finger clear in on
account of pressing against the broken bones Sd horse was
worth at least $500

3d Witness — Benjamin Reynold — for Pl'ff States that he knew
the horse for 18 months before he died and saw
him about 10 days before he was hurt. Saw him
on the day he died — and before he was dead — there
was a small hole in the right fore leg above the
joint which seemed to range straight through — hole deep
leg several times — horse had been down several days and
nights before he died he was incurable and had to be killed — was
knocked in the head — after horse died Witness cut off
his leg and split open the leg and found a leaden
bullet (now produced before the jury) lodged against
the skin on the other side The Bullet was mashed — the
bone was split open and a large piece loose and small
pieces of the bone were in the leg fractured off
saw several pieces of bone on bandage
before horse died John Chapman and
John Leonard were both present when he
made the examination The gun that shot
this ball would not run a 100 to the bar
The horse from what I knew of him his age
&c was worth $700.00 or $800.00 was a fine horse
and was five years old Witness well acquainted
[8075-1] ted with the lot and gate fence ten or
twelve rails high staked and ridered heavy

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gate latched on out side hung on hinges stats close together horse could not put his nose through; gate heavy and strong made of white oak timber, [illegible] gate before & after horse was killed regularly gate latched; Saw experiments tried on the gate the morning the horse was found to be hurt Chapman knocked it with a heavy piece of timber on the inside and kicked it but it could not be opened in that way it was very hard to open Defendants Counsel objected to this enquiry as to experiments being made on the gate after the horse was hurt which was over-ruled by the court, and excepted to by Defendant at the time The gate was a heavy gate and hard to open after making experiments saw Chapman try experiments to see if it was hard to open or whether a horse could have opened it and said Chapman after trying the hardest sort to open gate could not do it. Witness was at Chapmans and saw a horse knocked in the head dont know who put the bullet in the horses leg, witness got bullet out of horses leg and give it to ~~go~~ John Chapman. Chapman called on witness to witness experiment on gate before the horse died Chapman said he would like for some of us to examine horses leg Took the bullett out of horse leg no one helps me cut the leg off several persons were present and saw him take ~~it~~ it out John Chapman and ~~[illegible]~~ Leonard both saw it. Ball was flat and badly mashed when took it out. and would sum about

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60 or 70 balls to pound John Chapman
John Leonard and John Bysam
and West Allen were present when the
horses leg was cut off and the ball was found

4th Witness John Chapman saw horse day before hurt
On the Monday before horse was hurt
appeared well saw horse leg the morning
after horse got hurt leg bone was
broken all to pieces above the cap of
the Knee help to work on the horse and
all means were used to save him
horse was down about two days before
Killed and could not have stood
up the day he was Killed. there were pieces
of the bone on the bandage - was present
when the horse was Killed and saw the
bullet taken out of his leg - Reynolds found
bullet - went through above knee joint -
orifice reached up about two fingers - was
standing by when Reynolds found bullet
and has had it in possession ever
since - That bullet produced before the jury is
the bullet which Reynolds took out of
horse leg Deft Abner and Daniel live apart
half a mile - horse lot was twelve rails high
and never knew horse getting out is
a brother of Pl'ff Sun was half an
hour high when witness was sent for
to see the horse day before Christmas he
was hurt and Killed about the first of
January - leg was pretty near rotten when
cut off no appearance of healing or getting
well brother told him wanted him to
Examine horse before Killed - injury was in

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night leg said horse was worth from ~~five~~ $500 to a $1000 and was a very fine horse and sure foal-getter

5th Witness — **Mrs. Stilley** — heard Deft Eason say last winter after Chapmans horse was hurt and there was a talk that he had been shot by said ~~Eason~~ Abner ~~Eason~~ Abner Eason said to witness I suppose I have killed a man's horse but I'm going to have an honorable discharge like I had when I came home from Mexico Chapman said I killed his horse I have always lived honorable. Mr. Chapman has lost his horse and he wants a pension. This was early one morning and Deft was at our house on horseback and seemed to be much excited

6th Witness — **Caroline Riddle** for pltff and says:— was at Abner Eason's house last winter when Chapmans horse got hurt. was at Defts Abners on the night the horse was hurt had been talking about Mrs Shadowing being a witch — dont know what night or day in particular it was. wasn't Sunday night — on some night after dark some person came to fence and called and thought it was Deft Shadowin she was well acquainted with Shadowin well acquainted with his voice and thought it to be Shadowin from his voice was after dark and before bed-time the man at the fence called and Abner Eason went out to him and soon returned to the house and took his gun down and he and

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his son William went out together & and his wife told him to shoot it if it was a witch between ten and Eleven o'clock Deft and William Came back but she said that she had been asleep and could not tell the time of night heard gun fire back of Deft ~~field~~ Abner field after they left the house in the direction of Chapmans - dont know what time of knight it was when gun fired - when Deft Abner and his son William came home she asked him if he had shot a witch to which he Abner replied he had shot one in the fore-leg and it run like hell

Cross Exd Witness positively States she dont know what time it was when Deft Abner went out, or when he returned or when she heard the gun fire Couldnt tell whether it was ten or Eleven o'clock and that is all she could or would tell about the time the deft Counsel ~~asks~~ with a view to impeach asked witness the following questions: 1st If she did not state at the house of Joseph Gower in the presence of said Joseph Gower and his wife and Mary Gower that she did not hear Abner Eason make use of any such language as that deposed by her, as to said Aber shooting a witch in the fore leg and it running like hell and taking his gun and going out after dark and hearing a gun fire in the night? to which witness answered that she never had used any such language in the presence

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of said Greer and wife but that Abner Eason tried to force her to say something of the kind.

2nd Did you ever say in the presence of Jesse Dean at Deft Abner Easons the day after the trial for shooting Chapmans horse and after pltff Chapman had charged deft Eason with shooting his horse that Abner Eason did not go out with a gun the night Chapmans horse was hurt, and that you never knew Abner to do any thing of the kind? to which 2nd question she replied that she never did

3rd - Did you ever state to Joseph Williams at the house of Sam Plasters after Chapmans horse got hurt that you never heard Abner Eason say a word about shooting a witch in the leg and that said Abner did not go out, with a gun that night and that you never knew, any harm of said Abner in your life? to which witness answered that she never had any conversation with Joseph Williams about it and she never had said anything of the kind

Witness further states on the Cross Examination that deft Abner had but one gun that she knew of and that he often went out after night with his gun to kill a Turkey

[8476-16]

17th Witness } Mrs Man for pliff states that she never heard Deft Abner make any threats against Chapmans property before horse was hurt what she did hear she heard in February after the horse got hurt. In Speaking of the pliff, Deft Abner said one or the other of them was bound to be broke up as Chapman accused him Deft of Shooting his horse and that said Abner denied doing it, in same con-versation

18th) Witness) Mrs Marley for Pliff heard Deft Eason say about a year before horse was killed that he said Chapman was a lazy son-of-a-bitch that he made his living by keeping a stable-horse that Chapman could not flourish where he was

Cross Exd Chapman and said Abner dealt together all the time up till horse was hurt and appeared to be friendly, heard each speak hard of the other behind their backs for a good while before and up to the the time the horse was hurt

19th) Witness) Mrs Huddleston for pliff Deft Shadowin said to me that if said Chapman had not traded his father a disorder-ed mare his horse would have been living still. said Shadowin was then in custody of Mr Lewis at Durhams Grocery ~~[illegible]~~ in Jeffersonville on charge of shooting said horse

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10th Witness } Mr Lewis for pliff stated that he heard said Shadowin say same thing at the same time at Jeffersonville that he did not admit or deny killing the horse or having something to do with it The horse was worth five hundred dollars

11th Witness } Mr Pierson for pliff heard deft Eason say that pliff Chapman would be a poor man in three years and he witness was a very poor man this was about three years ago also heard deft Abner say said Chapman had the big head and lay on his back in laying about the same time knew a horse was a roan a sure foal getter and worth about $800. or a $1000.00

Defts counsel then asked witness on cross examination if he had not heard the people in the neighborhood generally say such things about Chapman and if it was not a general talk among the neighbors, pliff objected and court sustained the objection and Deft then and there excepted said witness further stated that the deft Abner rented ground of the pliff the season before the horse was killed and made a crop on said ground so rented of said pliff

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12th Witness } James Parson for pl[ai]ff states that after the horse was killed he was going after a wagon and stopped where Wesly Shadowin and his brother were cutting wood on their farm, the brother of said Wesly Shadowin stated to said Wesly that Abner Eason had sent word by his, Easons son, that he want to see deft Shadowin to learn him something and said Wesly Shadowin went over to Abners and when he Wesly came back his brother asked him, Wesly, what Abner wanted to learn him and Wesly said that Abner Eason told him that the people that they had killed his Chapmans horse and that they had better to keep shy this was after Chapmans horse was hurt a few days

13th Witness } Thomas Wilson for pl[ai]ff states that Deft Abner stated to him while in custody for killing Chapmans horse ate Zittys grocery in Jeffersonville "Tom I have a fight case on hand, I'll give you $35.00 if you'll swear that I was at a certain place the nights that Chapmans horse got hurt."

Deft Counsel then asked said Wilson if he did not say at Zittys grocery ofid in Jeffersonville in the presence of Bluford Shadowin to the deft Abner that he Abner had never offered him $50 or any other sum of money to swear that he was at some

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other place the night that Chapman horse was hurt, to which said witness answered that he did tell said Abner that he would not swear that he offered him $50, but he did offer witness $35. Deft Counsel asked said witness how long he had been in the State and if he had not changed his residence very often since he come into the State? to which witness replied that he had been in the State about 12 months and had not lived very long in any one place. Deft Counsel then asked him if he had not gone under different names wherever he changed his residence to which plff counsel objected which objection was sustained by the Court and the witness was not allowed to answer said questions to which the deft then and there excepted

14th Witness } Nathan Poplin for plff states that after Deft Abner had been arrested on a charge of killing Chapmans horse he overtook Deft Abner, and one Wile Scott, on the high-road between Marion and Jeffersonville. when witness ~~[illegible]~~ heard Abner offer said Scott $25 if he would take Caroline Riddle off so that she could not be present at court to swear against him as she was all the witness he dreaded in the case against him for shooting Chapmans horse that there was no other person present but

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~~14~~

Witness Deft Abner and the said Scott never heard, but the one conversation between the Deft and said Scott, on the Subject

15th Witness } John Leonard for Plff present when ball was taken out of horses leg that he heard Deft McEason say, that if Chapman had not cheated his father in a horse trade his, Chapmans, horse would still have been a live this conversation took place near Spillers Mill about two mile from the town of Marion Said Eason was at the time going from the mill toward Jeffersonville and said Leonard to the mill he only had the one conversation with Eason about the said Chapmans horse Jacob Aright was not present but was close by at the time he might have been in the mill as the talk was close to the mill

Defts counsel then asked said Leonard if he had not been a prisioner and confined in the County Jail, of Clinton County for crime and broke out of jail which witness refused to answer and Defts counsel having insisted on the witness answering the Court decided that witness was not bound to answer to which Deft excepted at the time which was all the evidence adduced on behalf of the plaintiff in this cause The Deft then introduced Jesse Dra[illegible]as a witness who

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~~To~~

being sworn, was asked by Dfts Counsel as follows:– Did you hear Caroline Riddle say at Abner Easons the day after the trial for shooting Chapmans horse in the presence of said Abner after the deft was charged by Chapman with shooting his horse that Abner Eason did not go out with a gun the night Chapmans horse got hurt and that she never knew Abner to do anything of the kind to which question pltff objected because it was leading which objection ~~was~~ the Court sustained because it was leading – the defendant then and there excepted to the ruling of the Court said Dean then went on to say that he heard the said Caroline talk about the said Abner and that she never knew anything wrong about him and that they conversed a good deal about her going to Lucas against Abner, and that there was no compulsion or force used. ~~Dfts~~ Counsel on their cross examination asked said witness if what he heard stated was not all he knew he about it to which witness replied that it was Plffs counsel told said witness then to repeat what he had stated to which said witness he stated that he heard Caroline say on the occasion aforesaid that she never knew any harm of him said Abner in her life Plffs Counsel then asked said witness if that was all he heard her say about it when witness said

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23 that it was about all but he had got it so tangled that he could not then tell how it was.
Larkin & Mary Grover were asked the same question in substance in reference to what Caroline Riddle said at their house as that put to Jesse Dean the former witness which questions were put to said witness in the direct and leading form of the question sought to be put to Jesse Dean and in reference to the same subject for the purpose of contradicting and impeaching said Caroline which objection was sustained by the court and the question was not permitted to be put by the court to witness in a ~~ruling~~ a leading form ruling of the court in sustained said objection deft then and there excepted said Grover and wife both then stated that they heard Caroline say something about deft Abner going out of a night and that they could not tell much about it at the time they also stated that they were acquainted with John Leonards general character for truthfulness in the neighborhood in which he lived in Clinton Co Illinois, and that his character was bad for truthfulness Deft Counsel then asked said witness if from their knowledge of his general character in his neighborhood aforesaid, ~~that~~ if they would believe him upon oath to which question pltff objected

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24 and the objection was sustained by the Court and witness was not permitted to answer the same to which ruling of the Court Deft then and there excepted The deft also asked said witness to state what he knew if anything in reference to John Leonard being confined in the jail in Clinton County, to question Pltff objected and the question was not permitted to be put to the said witness to which ruling of the Court the deft excepted at the time

Blueford Shadowin was next called as a witness by deft, to whom the question ~~was~~ put to the witness Tom Wilson in order to impeach him was put in a direct and leading form but the plff objected to the question and the Court sustained the objection because it was leading and the deft at the time excepted to the ruling of the Court witness then under the ruling of the Court as to the proper mode of putting the question in reference to the evidence of Jesse Deac that the said Tom Wilson said in his presence that he had ~~been~~ not been offered fifty Dollars money by said deft Abner to swear that he Abner was not at a certain place the night Chapmans horse was hurt

Plff on Cross examination asked said witness to repeat what he said before when ~~[illegible]~~ said witness stated that

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25 he heard said Wilson say to ~~[illegible]~~ Deft Abner that he Abner had not offered him, Witness, to swear for him Deft. Pltffs Counsel then told said witness to repeat it again when said witness again repeated what he said in his last statement, Defts ~~[illegible]~~ Counsel then asked him if that was all that was said said witness replied it was but further stated if he said anything more than that in his first statement it was right but he could not recollect whether he said it or not if he did say so it was true.

Charles Starr another was sworn on behalf of Defendant who stated he knew Caroline Riddle for five years and that he was acquainted with general character of Caroline Riddle for truthfulness in the neighborhood in which she lived when witness knew her, her general character for truthfulness is bad in the neighborhood. ~~[illegible]~~ Deft Counsel asked the said witness if from his knowledge of her general character for truthfulness he would believe her upon oath Pltff objected to this question being put, and the question was sustained by the court, and the question was not permitted to be put by the Court, to which Deft excepted at the time

Being Cross Examined witness stated said Caroline was about 12 years old when he first knew her or thereabouts,

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and that he speaks of her character at that age she is now 19 or 20 as witness thinks he heard the Widow Bain one of the Parkers and many other neighbors say but could not tell who she was a lying girl and that her character for truthfulness was bad he always heard her badly spoken of and thinks he heard most of the neighbors say her character for truthfulness was bad – he cant say that he heard every one of her neighbors talk about her but he heard a good many talk about her whose names he cannot recollect he did not hear Richard Parker speak about her

Defendants nyt introduced as a witness Larkin Goner and Miss Saunders when both stated that the defendant Shadowin was at the house from about Sundown on the night that Chapmans horse was hurt viz:- on the night of Monday before Christmas 1856, and went to bed there and was there at day light next morning that the house of said Larkin 1½ miles from said defendant Abners and that said Shadowin had been there every night from Sunday till Tuesday morning. Being cross examined they stated they knew this from the fact that they all lay down about 9 or 10 o'clock and they close the doors and that said Shadowin got up there in the morning, and if any person had gone out of the house or come in, in the night time they had been likely to hear it, and being examined they stated that they

[8475-26]

were fully satisfied said Shadowin was there at said Gener's house all night the night the horse was said to be stole but he might have got up without their knowledge.

Joseph Williams was also introduced as a witness and the court having not permitted the question put to Caroline Riddle in reference to a conversation with said Williams on her cross examined in a direct and leading form in order to impeach and contradict said Caroline, defendant Excepted as before at the time for the ruling of the court and said witness then stated under the ruling of the court, that Caroline told him that Abner Eason never said anything to her about shooting a buck-rabbit in the fore-leg and she also said that she never heard defendant Abner say anything about it nor did she ever see said Abner go out at night with his gun but that Chapman had tried to get her to swear she knew something about it, defendants counsel then asked said witness if he was acquainted with said Caroline's general character for truthfulness in the neighborhood in which she lived when he knew her and also her general character for Chastity to which pl[ai]ff objected and the objection sustained as to that part of the question as to chastity and the witness

[8475-27]

was only permitted to answer as to truthfulness, to which ruling of the court defendant excepted at the time, said witness then went on to state that he knew nothing about her character for truthfulness that he had never seen her before that day. Being cross examined said witness stated, that he asked said Caroline if it was true that she was going to swear that Abner Eason the defendant went out with his gun the night the horse was said to be shot or hurt because he had heard a good deal of talk about it and was not much acquainted with either of the parties only he wanted to know if A. did do it and he never had any talk with A. about it, he went to said Saml Plaster's house to see ~~about it~~ Caroline not to ask her about ~~it~~ what she knew he had her on his lap and was chatting her you know as a fellow would if he had a chance

Defendant then introduced Wily Scott a witness a witness on her behalf who stated that he was present when a conversation arose between defendant Abner and him about Caroline Riddle Mathew Poplin was along but he could not tell whether he was actually present, and in hearing or not it was on the road between Jeffersonville and Marion he Abner was saying that Chapman he feared would tell said Caroline Riddle to

[6475-28]

swear a lie for him and said all he was afraid of in the suit between and said Chapman was said Caroline swearing against him witness then said to said defendant in joking sort of way what will you give me to take Caroline clear off so that she cant swear against you I will take her away for $25. so she cant swear to which Ab replied that he did not want her to go away he would have her to go for $50 for if she come into court to swear a lie they would Riddle her that said Abner never offered him $25 for taking off sd Caroline or any thing else on the occasion aforesaid & this is all the conversation he ever had with said Ab about it. Being cross Examined saith he had been taking a glass but was not drunk, and he knew as well as he ever did what he was doing and had a distinct recollection of the conversation and was positive in what he said and that it was him, witness, made the proposition in a joke Eason said if said Caroline would swear the truth he had no fears about it this conversation was after Chapmans horse was said to be shot and they were accusing the deft Abner of having a hand in it and Northrup says that ~~says~~ said Ab

[#475-29]

was in trouble about it thought he joke him about ~~it~~ said Caroline but he never had the least intention of carrying her off or proposing anything of the kind in earnest at all Jacob Aught another witness for defendent said, he was present at the time spoken of by witness John Leonard said William Eason towards home and witness was standing by the waggon close to the mill Leonard was there and Mr Eason passed witness and said Leonard and went on, the last witness saw of him was a going on towards home at a distance of some fifty yards off witness heard all that was passed between said Leonard and said Mr Eason and there was no such conversation he is quite certain as that sworn by Leonard as he heard all that was said this was the only time he and the said Leonard were together when said Eason were about' Being Cross Examined Witness Stated that he went into the mill, after said Eason had passed about fifty yards or so I staid in the mill a few minutes come to waggon said Leonard was still there and Eason was clear gone out of sight he, Eason was on horseback when witness seen him at Spillers mill at the time aforesaid, which was all the evidence in the case of the part of the de=fendent,

[stamp]

this Bill of Exception be legally sealed and made a part of the record which is done accordingly

Wm H. Parrish (Seal)

31

The foregoing evidence introduced on the part of the plaintiff and defendants was all the evidence introduced on said trial

The Pl'ffs Counsel then asked the court to give the following instructions on behalf of plaintiff

No 1 The Court instruct the jury that if the believe from the Evidence that defendants shot the horse of Plaintiffs whereby said horse was rendered wholly valueless the verdict should be guilty and damages assessed in favor of the plaintiff to the amount of which the evidence may shew said horse was reasonably worth

Given

That if the Evidence shows that one or two only of the defendants are guilty the jury have a right to find such defendants or defendants guilty and against such defendant or defendants as the evidence may fail to shew guilt against

Given

The jury have a right and it is their duty to regard circumstantial evidence and if the circumstantial Evidence offered by the plaintiff in this case is sufficient to satisfy the minds of the jury that defendant killed Plaintiffs horse; the verdict should be guilty

Given

The jury alone must judge of the Evidence in this case, and give it whether positive or circumstantial such weight as in the opinion of the jury the same may be entitled to

Given

[8975-31]

No 2 There is no reason in law why the proof in case should be any stronger than if action was trover, replevin, debt or assumpsit and the jury are to judge of the sufficiency of the proof. The question is in whose favor is the balance of proof — does the proof offered by Plaintiff, whether positive or circumstancial convince the judgement of the jury that the defendants have done him the Pleff the injury of which he complains. If it does the verdict should be in favor of the plff. If it does not the verdict should be for defts

Given

No 3 The rule of law applicable to criminal cases which requires the defendant to be proven guilty beyond a reasonable doubt, does not obtain in this case the weight or preponderance of proof must govern the jury in forming their verdict

Given

That although the witnesses Storp may have testified to the bad character of Caroline Riddle, yet if such evidence given by Caroline Riddle consistent and is corroborated by other facts proven in the case the jury may give their evidence whatever weight they think it entitled to it does not follow that because one is proven to have a bad character for truth that the jury are bound to disregard her evidence and cannot pay any attention to what such person

[8475-32]

may swear in this case The jury in passing upon Caroline Riddles evidence should look to the facts deposed to by her — their reasonableness — her manner on the stand — the extent to which she may be corroborated by other witnesses her character for truth and after doing this attached to her statements whatever weight they think proper if any the jury are the peculiar judges of the credibility of the witnesses

Given

33 Chapman }
vs } Trespass
Eason et al }

No 1 That the circumstances of witness Leonard refusing to answer as to whether he was in prison in Clinton county is a circumstance proper for the consideration of the jury in regard to the credit due him and the testimony of Gower and his wife as to his badness of character for truthfulness is evidence of that fact if not contradicted by any other witness deposing as to his character for truthfulness

Refused

The first part of this instruction is wrong the ballance is right

Court

No 2 That in the case to warrant the jury in finding the defendants guilty the evidence ought not to be inferior to the testimony of a single witness swearing to the fact of their guilt

Refused

Chapman }
vs } Trespass
Eason et al }

1 That in respect to all verbal admissions that they are to be received with great caution The evidence consisting as it does of

[8470-35]

mere oral statements is subject to much imperfection and mistake the party being misinformed or not having clearly expressed his own meaning it frequently happens also that the witness by unintentionally altering a few of the expressions really used give an effect to the statement completely at variance with what a party actually did say

Given

2 That loose admissions not made with deliberation and precisely identified are the lowest grade of evidence and are entitled to but little weight

Given

3 That the jury cannot find the defts or either of them guilty upon suspicion or because there may be some suspicion

Given

4 Circumstances surrounding the case nor can they find the deft guilty upon strong suspicion merely, But that it is of the greatest importance that the jury should carefully and deliberately consider all the evidence in the case on both sides and should not find the deft guilty from a preponderance of evidence

Given

[8475-34]

5 That if the jury believe from the evidence that it is as likely that the horse was not shot but was injured by a kick and the ball was put in the horses leg after he was dead as that the Casons and Shadowin went after night and took the horse out of the lot, and shot him the jury ought not to find them guilty

Given

6th That the testimony of the witness Staring that Caroline Riddles character is bad if uncontradicted is evidence of that fact, and the evidence of Joseph Grover & Mary Grover of the Character of Leonard is also evidence of that fact.

Given

7 That if the jury believe from the evidence that deft Shadowin was not at the house of the deft Cason the night the horse was shot and was in fact at Larkin Grovers that is a circumstance proper for the consideration of the jury in considering the credit due to Caroline Riddle with the other evidence adduced by the deft for the purpose of impeaching her

Given

[8470-35]

8. That if the evidence from the fact that the witness Pike and Chapman & family did not hear a gun shot off the knight the horse got crippled and heard the horses making ~~the horse~~ a noise in the yard it is a circumstance proper for the consideration of the jury in reference to the question whether defts shot the horse or not

Given

Chapman vs. Eason et al } Trespass

No 1 That in this case before they can find the defendent guilty the circumstances proven must be as satisfactory as if the fact of the defts guilt was proven by one creditable witness

Refused

That in this case before the jury can find the defendents guilty they must be as well satisfied of the guilt of the defendents as if the fact was established by testimony of one creditable deposing that the defendent shot the horse of Chapman

Refused

{8470-36}

37 Chapman vs. Eason et al } Trespass

That where the circumstancial evidence is alone relied upon for proof of the defts guilt it ought to be as satisfactory in its nature as if the guilt of the defts was established by the evidence of one credible witness swearing to the fact,

Refused

That circumstantial evidence ought to be as satisfactory in its nature and ought not to be inferior to the testimony of one witness swearing that he saw the fact committed

Refused

+ Whereupon &c. After the jury retiring to consider ~~after the jury retiring~~ of their returned the following verdict in favor of the plaintiff
We the jury finds the defendants guilty and assesses the plaintiffs damages at $500
Whereupon the defendants moved for a new trial and in arrest of judgment For the following reasons
Because 1st the verdict is contrary to Law
2nd Because the verdict is contrary to Evidence
3 Because the verdict is contrary to Law and Evidence 4 because the court allowed improper questions to be put to the witnesses of plaintiff and refused to allow proper to be put to the witnesses on behalf of defendants
5th Because the court allowed improper

[84?5-37]

Evidence to go to the jury on behalf of plaintiff in reference to the Experiments on the gate after the horse was alledged to be shot for the purpose of proving the gate could not have been opened by a horse 6th Because the Court refused to allow leading questions to be put to the witnesses called to impeach Caroline Riddle Tom Wilson & Leonard 7th because Court refused to allow witnesses for defendant to say whether they would believe said witnesses Riddle & Leonard upon their oaths 8 Because the Court refused to allow defendant to ask Sd Tom Wilson whether he had not gone by different names in the different places he moved to 9th because the court refused to allow defendant to prove by Jo Williams, that Caroline Riddles character for Chastity was bad in the neighborhood in which she lived 9th Because the Court gave improper instructions to the jury for the plaintiff and refused to give the instructions asked for and proper instructions on behalf of Defendant

10th because the defendant was surprised on the trial by Plaintiff in producing the bullet ~~refered~~ refered to in ~~witnesses~~ testimony of witnesses for Pltff and to support which ground for a new trial the following affidavit was filed by defendant and read on trial

Motion

Daniel Chapman
vs
Abner Eason
Wesley Shadowen
and William Eason

Trespass

Motion for a new trial

This affiant Abner Eason being first duly sworn according to law in behalf of him

{D 475-38}

Self and the other defendants Said Eason deposes and Says that they were taken by Surprise on the trial of of the above cause by the production of a certain leaden bullet alledged to have been found in the leg of Plffs horse when Killed and ~~that~~ which said Bullet was alledged by Plff to have been Shot by this defendant in Co with the other defendants at Said horse on monday night before Christmas day of 1856.

That the only evidence or the main Evidence against this affiant and his Co defendants as he has been informed & believes was that of Caroline Riddle who swore upon said trial she was at defendants house the night the horse was Shot and that some person hollowed at the fence after dark and this defendant then took down his gun and that he & his son the defendant William went out after Knight and Come back some time in the night & that after he went out she heard a gun fire and that after he & his son returned said defendant Abner Stated he had shot a witch in the leg and that it run like hell and that defendant Abner had only one gun and that she was living at defendant at the time which was the substance of her evidence and was as he believes the principal evidence in the case against him that this affiant nor his Co defendants never seen the Bullet produced by the Plaintiff on the trial nor did he Know they would produce any Bullet before they went into trial which if he or they had Known before they went into trial they Could have proven was never shot out of the gun this affiant had at the time said Caroline Riddle Swore She Saw this affiant take his gun and go out And this affiant had not time to get the gun nor his witness in time to testify before the jury after said Bullet was produced that

[8475-39]

this affiant bound over to Court for the Supposed Killing of Plaintiffs [illegible] gave Same gun and the only gun he had at the time Spoken of by Caroline Riddle to George Sanders to Keep for him who has had Said gun ever Since and Can produce it before another jury in Case they Can get another trial in this Cause and this affiant Can prove by Said George Sanders that the ball produced on the trial of this cause Could not have been got into the gun he had at the time Said Caroline lived with him and on the night the [illegible] is alledged to have been Shot. And he Can also prove by Said George That the very gun he has now in possession is the Same gun he owned and no other at the time Said Caroline lived with him That this affiant and his Co defendants had no other witness at the trial by whom they Could prove the Same facts and they Can also prove by Said George Said gun Carries a ball a great deal Smaller than the ball produced on Said trial That this affiant and his Co defendants Can positively make Said proof by Said George Sanders who lives in Williamson County not far from Marion the County Seat Adistance of 1 [illegible] so from Benton County Seat of Franklin County and he is advised and believes that if they Could have had that proof before the jury who tried Sd cause the verdict for him and his Co defendants And this affiant positively denies Shooting Said Pltff [illegible] Either in person or in Company with Either of the other defendants or any other person or being in any way accessory to it That this affiant States positively that had he Seen Said bullet or Known it had been produced This affiant would have had Said witness Sanders at the trial And that Sd

£8475-48

Said Saunders would have not only produced sd gun but he could have produced and can produce the bullets carried by said gun and the bullet moles belonging to it and can by the production thereof prove beyond a doubt that if the said horse was shot it was not done with the gun owned by this affiant at the time spoken of by Caroline Riddle and which the only gun he had And this affiant therefore of his being surprised by the unexpected and unforeseen production of said Bullet before the ~~said~~ jury on said trial which this affiant positively swears he did not know would be produced before it was on said trial was not discharged from his gun nor by him from any gun whatever at ~~said~~ horse ~~said~~ of said plaintiff and that he is wholy innocent of the shooting of said horse

his
Abner + Cason
mark

Sworn to and subscribed
before me this 11 day of September
1857 L R Harrison
Clerk

But the Court overruled said Motion for a new trial and in arrest of Judgment ~~and rendered~~ Judgment on the verdict of the Jury for $500 & Costs, to which Judgment of the sd Court the defendants by their counsel then and there excepted and pray this their Bill of exceptions to be signed sealed & made part of the record which is done accordingly

William R. Parish [Seal]

[8475-41]

42 Daniel Chapman

vs

Abner Eason William Eason and Wesley Shadowen } Trespass in personal property

And now on this 12th day of September AD 1857 this cause ~~came on to be heard~~ being Called again where upon the motion for a new trial in this cause was overruled by the Court whereupon ordered by the Court that the plaintiff have judgment against the defendants for Five Hundred dollars together with his proper Cost in this behalf Expended

Whereupon the defendants by their Attorney prayed an appeal to the Supreme Court of this State which was by the Court allowed on Condition that the defendants Abner Eason William Eason and Wesley Shadowen Enter into Bond with Robert M Hunley as Security in the Sum of Seven Hundred dollars within thirty days

State of Illinois }
Franklin County } ss I Lemuel R Harrison Clerk of the Circuit Court in and for Said County and State do hereby Certify that the above and foregoing is a true and correct copy of the order and judgment of the Circuit Court in and for Said County and State made and Entered of record by said Circuit Court Commenced and holden at the court house in the town of Benton in Said County on Monday the 7 day of September AD 1857 as appears of record in my office among the records and proceedings of Said Court

In testimony whereof I Lemuel R Harrison Clerk of Said Franklin Circuit Court do hereunto Set my hand and affixed the Judicial Seal of Said Court at office in Benton this 23rd day of December AD 1857

L R Harrison Clerk

[8475-41A]

Daniel Chapman
vs
Abner Eason
Wm Eason &
Wesley Shadlaw

43

Abner Eason
William Eason &
John, Wesly, Shadowen } plffs in error

vs } Error to Franklin

Daniel Chapman } defendants in error

November term Supreme Court at Mt Vernon in and for 1st Grand Division of the Supreme Court ~~AD 18~~ State of Illinois AD 1858

Came this day the plaintiffs by Nelson and Johnson their attornies and say that in the record proceedings and process aforesaid And in Judgment of the Circuit Court of Franklin County aforesaid there is manifest error in this that the Judgment aforesd of the said Circuit Court was rendered in favor of the sd ~~plff~~ defendant, whereas by the Law of the land the said Judgment ought to have been rendered in favor of the said plffs and this they are ready to verify &c

and for assigning errors specially in the record and process aforesaid they say that the Circuit erred, first in this. that the said Court refused to grant the plffs in error a new trial in the Court below for the reasons set forth in Bill of exceptions

2nd Because the said Circuit Court allowed improper questions to be put to the witnesses of plff in the Court below & refused to allow proper questions to be put to the witnesses on behalf of defendant

3 the Court allowed improper evidence to go to the Jury in reference to experiments made by plff in the Court below on his own gate after the horse was alledged to be shot for the purpose of proving

{3475-43}

that the Gate could not have been opened by horse.
4th Because the Court refused to allow pleffs to put leading questions to the witnesses called to impeach Caroline Riddle, Tom Wilson & John Leonard
5th Because the Court would not allow pleffs to prove that said Caroline & Leonard could not be believed upon their oaths
6th Because the Court refused pleffs to discredit said Wilson before Jury by proving that he had gone under different names in the different places he resided or moved to after he came to this state.
7th Because the Court refused to allow pleffs to prove said Caroline Riddles character for chastity bad with a view to discredit her.
8th Because the Court ~~allowed proper question~~ gave improper instructions to the jury for the pleff & refused to give the instructions asked for and proper instructions on behalf of defendant
9th Because the Court refused to grant a new trial on the ground of being surprised by the production of the Bullet alledged to have been found in horses leg. as alledged by pleffs in their affidavit.
10th Because there is not the slightest evidence against ~~Plaintiffs~~ Shadowen & Wm Gasow or at least not enough to warrant the jury in finding them Guilty
11th Because there is not ~~evidence~~ ~~about~~ sufficient evidence of the Guilt of either of the pleffs & the verdict of the jury ought for that reason to have been set aside & a new trial awarded by Court. Wherefore for these and other errors apparent in the record afore the pleffs say that the Judgment of the said

Circuit Court of Franklin County may be reversed and for nothing esteemed &c

Abner Eason
William Eason & John Westly Shadowen Plffs in Error by Nelson & Johnson their attornies

Joinder in Error
W. J. Allen
Jno Deft in Error

[8475-43]

27

Anna Eason William
Eason and John W
Shadowen defts in
Court below & plffs
in error

vs Error to Franklin

Daniel Chapman
plff in Court below
& defendant in Error

Supersedeas denied
[illegible]

Filed 14. August 1858.
N. Johnston Clk

Paid by Nelson $5,00
Prepaid

27

Abner Eason et al
vs } Error to Williamson
Danl Chapman

One of the errors assigned by the Pltffs in error in this Case, is, that the Court below refused to allow the witnesses introduced to impeach Caroline Riddle to state whether or not they would believe her on oath.

In this ruling the Court below is sustained by the weight of American authority.
See 1st Greenleaf's Ev 461-462.
Swift's Ev 143
See also 2 Seam 610. 3 S&R 336-338. 11 S&R 198. 1st Appleton's Maine Reports 375. In this last the whole doctrine is ably discussed by Shepley J. and the authorities on both sides carefully reviewed

The Court is referred also to the case of People vs Mather 4 Wend 257

Wm J Allen for Deffts in Error

[8475-44]

No 27

Abner Eason et al.
vs } Error to Williamson
Daniel Chapman

Authorities referred to by deft in error

67
67
25
159
12
318
159
1909
19.20
70
1400

165
12
330
165
1980

2000

19
70
13.30
13.43

19.20
380

Easom et al plffs in error
vs Moore & Franklin
Chapman defts in error
Nov. term of the Supreme Court A D 1858
Brief of plffs authorities relied on in the argument of the above Case

1 That the Court erred in not allowing Direct questions called to impeach Caroline Riddle 2nd B. & B. 313
3 Starkie's Evi. 8. ~~2 Philips 427~~
2d Philips 432, 435, 9 Hum 411
11 Humphrey 556. 1 Starkie 213

2 That the Court erred in not allowing plffs to ask Wilson tending to disgrace him 1st Greenleaf 456 2 Phil 427

3 That there is no difference between Civil & Criminal Cases as to the amount of evidence necessary to establish a fact where proof of the fact depends on Circumstantial evidence alone - & to Constitute full proof the Circumstances all taken together must be as certain in the Conclusion to be deduced from ~~or the~~ them, as the testimony of one witness swearing to the fact 1 Starkie Ev p 577 & 571. Wills on Circumstantial Ev page

[8475.43]

4 That Caroline Riddle was successfully impeached of Item 411 & without her evidence there was none to sustain the verdict

5 That the verdict ought to have been set aside & a new trial awarded on the ground of surprise & the Court Erred in not doing so.

6 That the verdict is wholly unwarrantable from the testimony & the Court erred in not setting it aside

R S Nelson for appellants

7 The Court below erred in not allowing plff in error to ask Witness Stacy if he would believe her Caroline Riddle on oath & also witness Williams as to her character for chastity

R S Nelson for plff in error

8 That there is no evidence whatever to justify verdict against Plffs Hardaway & William Eason & verdict should set aside as to them

R S Nelson pl error

27

Eason
v.
Chapman

Brief of
Points of
defts

Rec'd Rein

Supreme Court &c
3d grand Division
Nov Term 1858

Abner Eason et al
vs } Error to Williamson
Daniel Chapman

This affiant in addi-tion to the affidavit already on file by him herein states, that altho he was engaged and assisted in trying the above Case in the Court below, yet he was not present, when the motion for a new trial was overruled — nor did he make any agreement whatever with reference to signing a bill of Exception in vacation. After the motion for a new trial had been disposed of, and the Franklin Circuit Court at September term 1857 had adjourned, affiant agreed that if a correct bill of exceptions was made out in time to get the Case into the Supreme Court and dispose of the same at November Term 1857, then it might be done. While affiant was at this Court at Nov Term 1857 the Judge had the bill of exceptions here attempting to correct it, and affiant did make some suggestions to the Judge (Parish) with reference to said bill, but did not agree that the same was correct, for affiant thinks and feels certain that said bill of exceptions is incorrect in very many important particulars, and does not in fact show the strength of the testimony

[8475-47]

introduced by the plaintiff below.

Affiant states in conclusion that he never did agree that this bill of exceptions was correct, or that any bill of exceptions should be signed in vacation, unless it was done in time to have the case disposed of at Nov term 1857. and that this agreement on his part was made after the term of Franklin Circuit Court at which said case was tried.

William J. Allen

Sworn to and subscribed before me Nov. 12. 1858.

A. Johnston Clk

Error to Chapman

Affidavit

Filed Nov. 12. 1858
A. Johnston Clk

Supreme Court of the State of Illinois. 3rd Grand Division. Nov Term 1858

Abner Eaton William Eaton & John W Shadowen
vs
Daniel Chapman

Error to Williamson

William J Allen being first sworn says that what purports to be a bill of exceptions in the above styled cause, and is incorporated in the record as such, was not signed by the Judge of the Circuit Court who tried said cause during the term of Court at which said cause was tried, and that the Judge of the Circuit Court before whom said cause was tried, did not sign said bill of exceptions until sometime in the month of November 1857 - a period of at least two months after the trial of said cause.

William J Allen

Subscribed and sworn to before me 10th Nov. 1858.
Noah Johnston Clk

[38475-48]

27

Abner Eaver
Abel
by
Daniel Chapman
Error to Williamson

affidavit

Filed Nov 11. 1858
N. Johnston Clk

No 27

Supreme Court of the State of Illinois, 3d Grand Division. Nov Term 1858

Abner Eaton, William Eaton and John W Shadowens
vs
Daniel Chapman

Error to Williamson

The Counsel for defendant in error in the above entitled Cause moves to strike from the record the bill of Exceptions for the reason that the same was not signed by the Judge in term time, or at the trial nor was there any entry on the record by the Judge, allowing the bill of exceptions to be prepared in vacation and signed nunc pro tunc Evans vs Fisher 5 Gilm 453 Dickhut vs Durrell 11 Ill 84. Burst vs Wayne 13 Ill 665.

And also for the reason that the Clerk who made out the record does not certify that the bill of exceptions is truly copied, or that any portion of the record is correct except the order and

[3475-49]

judgment. an affidavit is herewith filed shewing that the bill of exceptions was not signed at the trial nor until more than two months afterwards

William J Allen
atty for Deft in Error

Abner Eason
vs } Error to Williamson
Daniel Chapman

Motion to strike bill of exceptions from the record

Filed Nov. 11. 1858.
N. Johnston Clk

ABNER EASON, WM. EASON AND JOHN W. SHAODEN, Pl'ffs. in Error,

vs

DANIEL CHAPMAN, Deffendant in Error.

In the Supreme Court of Illinois, 1st Grand Division, Nov. Term, A. D. 1857

ERROR TO FRANKLIN.

ABSTRACT OF PLAINTIFF'S CASE.

Daniel Chapman, the Defendant, commenced an action of tresspass against the Plaintiffs for the supposed killing of a certain stable horse, belonging to the def't., which was tried at the Fall term of the Franklin Circuit Court, A. D. 1857, before Parish Judge, and a jury. Plaintiff's pleaded the general issue; verdict for plaintiffs in the Court below for $500.

The bill of exceptions filed in this cause by plaintiffs, shows that defendant owned a stable horse, worth $500 to $1000, which horse, on the night of Monday, preceeding Christmas day of the year 1856, well in the stable lot of def't., which was staked and rid-red, and that there was a stable in said lot, the door of which was left open so that the horse could pass in and out. That said horse was rather wild, and ungovernable, and that there was a gate from the stable lot to the house lot, which gate was very strong, and when shut the latch let into a post, and to be raised when opened and shut, and was hard to open or shut, and the night of Monday aforesaid, about dusk, the horse was well, in the lot. That the fence around the house lot was low, and there was a field immediately back of the house lot, where defendant's other horses usually ran. That about 11 o'clock at night there was a noise heard of horses fighting within the house lot. The defendant owned two dogs, which were watchful and were outside of defendant's house, somewhere in the lot, and were not heard to bark, and no gun was heard that night. That one of the horses in the field was a large horse and had a shoe on one hind foot. Next morning the fence of the stable lot, close to the gate was down, and the gate was open, and the stable horse was found near the door of the house, with his fore leg broken and hanging down, and the other horses also were within the the house lot. For several days after that, the defendant never thought of his being shot, but supposed some other horse had kicked him. That some two or three days after the horse was found in that condition, he was considered incurable, and was killed by defendant and his leg cut off, when a leaden ball, in a flattened and mashed condition, was taken out of his leg, and that said ball would run about sixty balls to the bar of lead. That before the horse was killed, plaintiff Abner was there and assisted defendant in working on the horse. That plaintiff and defendant had a falling out after the horse was hurt, and before he was killed by defendant, in reference to other matters, and at that time, plaintiff was not suspected in the least of injuring defendant's horse.

To fix the guilt of injuring said horse upon plaintiff, defendant introduced a witness of the name of Riddle, who swore that she was at plaintiff Abner's house the night defendant's horse was injured, and that plaintiff Abner, some time after dark, took down his gun, and together with his son William, went out, and that a voice was heard at the fence before said Abner went out, hallooing to him, and that said Abner had but the one gun.

That when said Abner went out, witness Riddle said to him, "If you shoot anything, shoot a witch," and that said plaintiffs Abner and William, came back some time in the night—when—she would not pretend to say; and she asked him if he had shot a witch, and said Abner replied that he had shot a witch in the fore-leg and it had run like hell. That plaintiff Abner and defendant lived about a mile or a mile and a half apart, and that witness heard a gun fire sometime in the night, over back of the field. Witness further stated, on a question put to her, for the express purpose of impeaching her, that she had never said anything to the contrary.

The defendant also proved by other witnesses that plaintiff Abner and defendant had talked considerably about one another, for several years previously, and that Abner said that defendant Chapman was a lazy man and made his living by keeping a stable horse, and that defendant would be as poor a man as he, (Abner) was, in three years, which statement was made about a year before the horse was injured; but that defendant and plaintiff neighbored with each other, and that plaintiff Abner rented land of defendant the season before the horse was hurt.

Defendant, by a witness by the name of Wilson, proved that plaintiff Abner, when he was arrested for the supposed killing of said horse, offered witness $35 to swear that he (Abner) was at some certain place the night the horse was injured; and another, named Poplin, swore that he heard plaintiff Abner offer Scott $25 if he would take said witness Riddle, away, so that she could not swear against him in this case.

Defendant also proved by a witness, by the name of Leonard, that plaintiff William said, shortly after the horse was dead, if defendant had not acted as he did with his father, Abner, his horse would now be alive.

[8475-50]

Defendant also proved by another witness, that plaintiff Shadoen, when in custody for the supposed shooting of said horse, said that if defendant had not put a deceased mare upon his father, his horse would still have been living.

Defendant also proved by Mrs. Stilley, that after defendant's horse was hurt, plaintiff Abner came to her house and said, "I suppose I have killed Chapman's horse, and I intend to have a honorable discharge from that, the same as I got when I came from Mexico." ~~Also that plaintiff Abner, in the same conversation, bitterly denied killing defendant's horse.~~

Defendant also proved by Mrs. Marks, that plaintiff Abner said, after defendant's horse was hurt, that either he, plaintiff or defendant, Chapman, would be broke up; and also by another witness, that plaintiff Abner sent word to plaintiff Shadoen, after the horse got hurt, that he wanted to see said Shadoen, to learn him something. That said Shadoen went over, and when he came back, said that defendant had been accusing plaintiffs with killing said horse, and that they had better be careful.

On the trial, John Chapman, a brother of defendant, produced a bullet, flattened and mashed, which he said was the bullet, taken from the horse's leg.

Which was all the evidence, substantially, of defendant in the case.

In the part plaintiffs, Wiley Scott stated that he never had been offered $25 by plaintiff Abner, to put said witness Riddle out of the way, or any sum whatever, but he did hear said Abner say that he wouldn't have said witness away from said trial for $50, and that all he was afraid of was defendant Chapman's influence over her.

Plaintiff introduced Joseph Williams, and other witnesses to impeach said witness, Riddle, by contradicting her, and for that purpose asked said Williams and other witnesses, in a leading form and in as direct a manner as they were put to the witnesses of defendant, on the cross-examination, as to what said witness, Caroline Riddle, should have stated to them, about said Abner's going out, and saying he had shot a witch in the fore leg; but to this the defendant objected and the objection was sustained by the court—to which plaintiff then and there excepted.

~~Plaintiff~~ Deft also, on the examination, in chief attempted to prove that after the horse was killed, experiments were made on the gate, in the presence of a witness, who testified, to that effect for him, to which plaintiff objected, because it was done after the horse was injured, and after plaintiff Abner was accused by defendant of shooting the horse, which objection the court overruled, and the plaintiff at the time excepted.

Plaintiffs also attempted to impeach the witness Wilson, in the same way as Caroline Riddle, to which defendant objected, and the objection was sustained, and plaintiffs excepted at the time.

Plaintiffs to impeach John Leonard, another witness, asked him if he had not been in jail for crime, in Clinton county, and broke jail, to which defendant objected, and the objection was sustained, and the plaintiffs excepted at the time. The plaintiffs then asked said Leonard, if he had not frequently changed his residence, and whether he had not gone by a different name at every place, to which the defendant objected, and the objection was sustained by the court, and plaintiffs excepted at the time. Plaintiffs then asked a witness if he was acquainted with the general character of John Leonard for truthfulness and veracity in the neighborhood in which he lived, to which witness replied that he was. Plaintiff then asked witness if his general character was good or bad, to which he replied that it was bad. Plaintiffs then asked witness if from his general character, he would believe him upon oath; to which the defendant objected, the objection was sustained, and plaintiffs excepted.

The counsel for the defendant then asked the court for several instructions, which were given, to the giving of which plaintiffs excepted at the time.—Instructions were also asked on behalf of plaintiffs, some of which were given and others refused, to the refusal of the which, on the part of the court, the plaintiffs then and there excepted.

Plaintiffs also, during the progress of the trial, on behalf of plaintiff Shadoen, proved that he, Shadoen, was at the house of another man, under three miles off, from Sunday night before Christmas, 1856, every night till Wednesday morning; which was about all the evidence on behalf of planitiffs, permitted to go to the jury, under ruling of the court, most, if not all the evidence of the plaintiffs being excluded from the jury, under the ruling of the court, with the exception of the evidence of one Starricks, who said he had known Caroline Riddle, and her character for truthfulness, amongst her neighbors, for five years, and that her general character was bad; but the court would not allow plaintiffs to ask said witness whether he would believe her upon oath or not.

31 to 33

The instructions that were refused by the court, and to which refusal exceptions were taken, were principally in regard to the effect of circumstancial evidence in a case of this kind, which the court refused on the ground that instructions asked for were only applicable to criminal cases, and there was a distinction between civil and criminal cases.

34-37

The instructions given and withheld by the court are contained at lenght in the bill of exceptions.

A verdict was returned for defendant, who was plaintiff in the court below, for $500. Whereupon a motion was made for a new trial and in arrest of judgement, for the following reasons: 1st. Because the verdict was contrary to law. 2nd. Because the verdict was contrary to law and evidence. 3d. Because the verdict was contrary to evidence. 4th. Because the court refused to allow proper question, and allowed improper questions to be asked of the witnesses adduced on said trial. 5th. Because the court excluded proper testimony and allowed improper testimony to go to the jury. 6th. Because the court refused to allow proper questions to be put to the witnesses called to impeach on behalf of the plaintiffs. 7th. Because the court gave improper instructions on behalf of defendant, and refused proper instructions on behalf of plaintiffs. 8th. Because the plaintiffs were surprised on the trial, by the production of a bullet before the jury, the reasons of which surprise on behalf of the plaintiffs, are contained in an affidavit. 9th. There is no evidence to warrant jury in judging any or either of defendants guilty, embodied in the bill of exceptions. Which motion for a new trial the court overruled and rendered judgment on the verdict, whereupon the defendants in the court below, prosecute their writ of error to this court, and assign for error the objections taken to the verdict, for a new trial and in arrest of judgment, as above stated, and on those grounds seek to reverse the judgment of the court below.

39

44

LOGAN, DUFF & NELSON, for Pl'ffs. in Error.

[8475-52]

27

Abner Eason, William
Eason and John W.
Shadowen
Plaintiffs in Error
vs
Daniel Chapman
Deft in Error

Abstract
S. Logan and
R. S. Nelson
for Pltff
S. Allen
for Deft
Parrish – Judge
Furnished & filed
November 2d 1858
N. Johnston Clk

Supreme Court Illinois
1st Grand Division
Nov Term 1858

Abner Eason et al
vs } Error to Williamson
Daniel Chapman

In a case of this kind where the testimony is often and perhaps usually circumstantial, the Court will rarely if ever disturb a verdict when there is any thing in the record, tend=ing to support the finding of the Jury
11 Ill 37. Graham & Waterman on New trials, 1212 - 1220; 1 Meigs Tenn R 84 - and authorities there referred to
The ruling of the Court below in refus=ing to allow impeaching witnesses to state whether or not they would believe the witness sought to be impeached, upon oath, was correct. 1st Greenleaf 461.
1 Starkie 211

Caroline Riddle was not impeached in the Court below. In the first place her attention was not called with sufficient certainty to time & place, nor were her state=ments made in Chief negatived, by any of the witnesses called to impeach her.

The rule by which circumstantial evi=dence is to be judged in Criminal Cases, does not apply to Civil Cases -

[8475-53]

Brief of authorities relied on by Counsel for Deft in error

W J Allen

until the Bill of Exceptions was signed & Sealed — & Sent to Benton 25 miles off
The Bill was not signed & sealed
until about the 3d day of the term
and on that very day very soon after W. T. Allen
dismissed the appeal for want of a
record not for want of a Bill of exceptions
when he knew a record could not
be obtained by the 3d day of the term if the Bill of exceptions
was signed & sealed at the Supreme
Court which he also well knew was the fact — it was absolutely impossible
to try the case at the supreme
when the Bill of exceptions was signed
by the Court and have a record by the 3d day of the term. This affiant never
had any understanding that
the consent of counsel was on
condition that the Bill should
be signed in time to try it at the
Supreme Court if correct as it was signed [illegible] the Court as a true bill. Altho this affiant complained of points of it being against the pltff & contrary but it could
have been tried at that term if W. T.
Allen had not dismissed the appeal
as a record could have been obtained
before Court adjourned in time to
try it — This affiant if the Court has
any doubt upon the subject asks
time to procure the affidavits of Logan
& Duff his associate counsel — and
it was understood that the case should be
tried at last term by this affiant as soon
as a record was obtained & no sooner, but
this understanding was defeated by defts counsel

Rich'd Shelton

Subscribed & sworn to
before me this 12th Nov
1858 N. Johnston Clk

[9475-54]

Eason et al
v.
Chapman
Affidavit
R S Nelson

Filed Nov. 12. 1858
A Johnston Clk

Eason
v.
Chapman et al } Error to Franklin

This affiant Richard S Nelson being first duly sworn according to Law deposes in answer to the affidavit of William T. Allen that this affiant stated that the Counsel of Deft in error agreed that the Bill of exceptions should be signed in vacation without any limit as to time only that the Supreme Court was spoken of as the place where it would be most convenient for the parties to meet.

That W. T. Allen was only one of the Counsel & there were several Counsel besides him engaged in the Case below & that if he was not present when the Motion was argued it was because he was too unwell to be in Court, but his associate Counsel did consent as stated by this affiant to have the Bill signed & seal in vacation at the last Supreme Court, which was done W T Allen assisting to settle the Bill. The record had to be filed by third day of the term & the record could not be made out

Abner Eason appellant
vs   error to Franklin
Daniel Chapman appellee

This affiant Richard S Nelson being first duly sworn according to Law deposes and says that it is true that the bill of exceptions in the above styled Cause was not signed & sealed until the [illegible] month of November 1857 - but this affiant states that the evidence was very voluminous & it was agreed between both Counsel for pltffs in error & the defts in error that the Bill of exceptions should be signed & sealed in vacation, subsequent to the fall term of the Franklin Circuit Court & that such was the understanding of the Judge who tried said Cause & signed & seal the same pursuant to said agreement in the vacation following s^d term of Court - That this affiant fully believes he can prove the same fact by John A. Logan & Andrew D. Duff his associate Counsel and further [illegible] that William J.

[847525]

able Counsel for deft in said help
& assisted in making out said Bill
of Exceptions in vacation pursuant
to said agreement & understanding
& agreed to take no advantage in this Court on account of its not being signed in term time
by said counsel as this affiant
can also prove S. D. Logan & Mathews
K. Parish the Judge also tried
the Cause & signed said Bill
of Exceptions & sealed the same

Richd. [illegible]

Subscribed & sworn
to before me this
11th Nov 1858

Noah Johnston Clk

27

Emmerson pltff
vs
Chapman deft

error to Bartholomew

affidavit on
motion to take
bill of exceptions
from file

Filed Nov. 11. 1858.
N. Johnston Clk

In the Supreme Court Nov term 1858

Abner Eaton & al plffs in error
vs
Error to Franklin
Daniel Chapman deft in error

There appeared H. S. Nelson in addition to the affidavit already filed by him states that the reason the Bill of exceptions was not signed & sealed in term time was this as he best recollects. That the Cause lasted two days before it was disposed of & the testimony was very voluminous & it was impossible to have the Bill of exceptions settled in term time. and that it was therefore agreed between the Counsel on both sides and the Court that the Bill should be settled in the ensuing vacation at some time when ~~at~~ the Counsel on both sides should be able to meet the Judge and settled it. & the Judge would not sign & seal it without submitting it to the opposite Counsel, and it was the understanding ~~&~~ that the Counsel & Judge would probably meet at the Supreme Court in the fall of 1857. That the Counsel ~~[illegible]~~ on both sides and Judge did meet at the last Supreme Court & the Bill of exceptions was then & there settled signed & sealed by the Judge. ~~it was~~

59475-5[illegible]

The Cause was taken up by appeal at the last term & after the Bill was signed there was not time to obtain a record & on motion of appellee the Case was dismissed after the Bill of exceptions was signed & sealed by the Judge, because the record was not filed in time the plffs in error then got the record made out, & sued out a writ of Scire facias to [illegible] errors.

The Counsel William J. Allen was present [illegible] assisted in settling the Bill of exceptions on behalf of defendant in Error & the Judge after submitting to the Counsel on both sides at last term of the Supreme Court signed it & sealed it as of term time. The Judge of the Court in Franklin Co where the Cause was tried went round the Circuit & the Counsel on both sides did not meet together nor meet the Judge until the Supreme Court.

That this affiant can make the above facts appear by John A. Logan & Andrew J. Duff & the Judge who tried the cause as he believes & this affiant [illegible] as Counsel for plff in error been in good faith believing expecting the motion to strike it from the record would be made ~~[illegible]~~ trying to obtain a reversal of the Case

in this Court & I am sent the record to Carlyle for a Supersedeas & had it returned on acct of the Judge's absence at Springfield & the record being sent on to the Judge in term time at Springfield, was returned without examination. This is an action of trespass for the supposed killing of a horse in which $500 dam. & a large amount of Costs have been recovered in the Court below and it is the intention of the plffs in error to go to trial & try the Case on its Merits at this term of Court. That the plffs in error used every means in their power to get the Bill of exceptions signed & sealed in term time, but neither Court nor Counsel could find time to settle it then, & the Court would not sign & seal it unless both parties Counsel were present and signed it & sealed it when they met according to agreement. This affiant therefore prays this Motion may be disallowed.

Subscribed & sworn to before me this 11 Nov 1858 } Richard Sheldon

A. W. L. Johnston Clk

[3475-58]

27 [illegible]

Abner Eason
et al
vs
Chapman

affdt to
resist motion
to strike excep-
tions from record

Filed Nov 11. 1858.

N. Johnston Clk

STATE OF ILLINOIS, } ss. 1st Grand Division
SUPREME COURT. }

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of Williamson **County,**

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of Franklin County, before the judge thereof, between Daniel Chapman plaintiff, and Abner Eason, William Eason and John W. Shadowen

defendants it is said that manifest error hath intervened to the injury of said Abner Eason, William Eason and John W. Shadowen

as we are informed by their complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Daniel Chapman

that he be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the first Tuesday after the Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Daniel Chapman notice, together with this writ.

Witness, the Hon. ~~Samuel H. Treat~~ Jno. D. Caton, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this fourteenth day of August in the year of our Lord, one thousand eight hundred and fifty-eight.

Noah Johnston
Clerk of Supreme Court.

[8475-59]

27

Abner Eason,
William Eason &
John W. Shadowen
Pltffs in Error

vs } Sci fa

Daniel Chapman
Deft in Error

Shffs cost
Serving 50
Mileage 40
Return 10
$1.00

I return the within served by reading
to Daniel Chapman Aug 24th 1858
Wm Saunders Shff

Abner Eason William Eason
And Edin A Shadowen plffs in error
vs
Daniel Chapman defendant in error

In the Supreme Court 1st Grand
Division November term A.D. 1857
Error to Franklin

The clerk will please issue a
writ of error & scire facias to bring
errors in the above cause
returnable &c to the next term of
the Supreme Court for 1st Grand
Division

R L Sheckon & John A
Logan for plffs in
in error

To the clerk of the Supreme Court
for 1st Grand Division

[8475-6B]

27

Eason & others

vs

Chapman

Error to Franklin

Praecipe

Filed 14 Aug. 1858

N. Johnston Clk

In the Supreme Court Illinois
Mt Vernon 1st Grand Division
Nov term 1857

Eason et al
v
Chapman
Error to Franklin

Motion to strike Bill of exceptions from the files — or record

In this Case the record shows the Bill of exceptions to have been filed in term ~~time~~ when the Cause was tried. It was agreed that the Bill of exceptions should be signed in vacation —

This Case was up at the last term on appeal appeal was dismissed & is now taken up on a writ of error and is a Case of vast importance & if the deft in error is right it cannot injure him to have this Cause tried — but not only was the Bill of exceptions agreed to be filed in vacation, but the

[8475-61]

Counsel for deft in error assisted in making out the Bill of exceptions at the time it was signed & sealed by the Court.

There was a Judgment below for $500 damages & about $400 Costs, and whilst the papers in error admit the better practise is to file the exceptions in term time as indicated in the Case of the people vs Pra[illegible] 2 Seam 205 yet in the Case of Evans vs Fisher 5 Gilman 456 the Court excepts Cases where Counsel Consent or the Judge enters the leave to file exceptions in vacation of record & signed nunc pro tunc

In the Case of Evans vs Fisher a verbal agreement was enforced on account of the sickness of the Judge — here is an agreement from absolute necessity of the Case & for the benefit of all parties that it should be signed & sealed as it was — which was done by the assent of Counsel of deft

And a third Cannot without injury to any party concerned if the pltffs is wrong we are willing to abide by it —

The Counsel has again shifted his ground because the Clerks Certificate is somewhat informal — this is a matter that ought be reached in another way — ought he not to move for a Certiorari to the Clerk on affidavit if the record is not all copied? if it is not all copied he can say so, but that it is all copied & a good deal more than is necessary is apparent from the fact that it is sought to be reached in this way — after a motion to strike from the files is made & while it is pending — by making the motion to strike from the record does he not admit it to be a record & treat it as such? & can he then say that does not appear to have been copied with all due deference the plffs think not This however it is hoped is a matter that can be obviated by obtaining the proper Certificate.

John H Logan Jhn Shelton for plffs

[8475-42]

Eason
vs
Chapman

Remarks of
Counsel of Plffs
in answer to
Motion

STATE OF ILLINOIS } SS. 1st Grand Division — WRIT OF ERROR.
SUPREME COURT, } THE PEOPLE OF THE STATE OF ILLINOIS;

To the Clerk of the Circuit Court for the county of Franklin **GREETING,**

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Franklin county, before the Judge thereof, between

Daniel Chapman

plaintiff , and Abner Eason, William Eason and John W. Shadowen

defendants it is said manifest error hath intervened, to the injury of the aforesaid Abner Eason, William Eason and John W. Shadowen as we are informed by their complaint, and we being willing that error, should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Count, the record and proceedings of the plaint, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Mount Vernon, in the county of jefferson, on the 1st Tuesday after the 2d Monday of November next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, the Hon. ~~WALTER B. SCATES~~ John D. Caton Chief Justice of our said court, and the seal thereof, at Mount Vernon this fourteenth day of August in the year of Our Lord One Thousand Eight Hundred and Fifty- eighth.

Noah Johnston
Clerk Supreme Court.

[8475-63]

27

Abner Eason,
Wm Eason and
John W Shadowen
Pltffs in Error
vs } Writ of Error
Daniel Chapman
Deft in Error

Issued & filed 14th Aug. 1858.
N. Johnston Clk

11

ABNER EASON, WM. EASON AND JOHN W. SHAODEN, Pl'ffs. in Error,

vs

DANIEL CHAPMAN, Deffendant in Error.

In the Supreme Court of Illinois, 1st Grand Division, Nov. Term, A. D. 1857

ERROR TO FRANKLIN.

ABSTRACT OF PLAINTIFF'S CASE.

Page 1 to 2

Daniel Chapman, the Defendant, commenced an action of tresspass against the Plaintiffs for the supposed killing of a certain stable horse, belonging to the def't., which was tried at the Fall term of the Franklin Circuit Court, A. D. 1857, before Parish Judge, and a jury. Plaintiff's pleaded the general issue; verdict for plaintiffs in the Court below for $500.

8 – 9

The bill of exceptions filed in this cause by plaintiffs, shows that defendant owned a stable horse worth $500 to $1000, which horse, on the night of Monday, preceeding Christmas day of the year 1856, well in the stable lot of def't., which was staked and rid red, and that there was a stable in said lot, the door of which was left open so that the horse could pass in and out. That said horse was rather wild, and ungovernable, and that there was a gate from the stable lot to the house lot, which gate was very strong, and when shut the latch let into a post, and to be raised when opened and shut, and was hard to open or shut, and the night of Monday aforesaid, about dusk, the horse was well, in the lot. That the fence around the house lot was low, and there was a field immediately back of the house lot, where defendant's other horses usually ran. That about 11 o'clock at night there was a noise heard of horses fighting within the house lot. The defendant owned two dogs, which were watchful and were outside of defendant's house, somewhere in the lot, and were not heard to bark, and no gun was heard that night. That one of the horses in the field was a large horse and had a shoe on one hind foot. Next morning the fence of the stable lot, close to the gate was down, and the gate was open, and the stable horse was found near the door of the house, with his fore leg broken and hanging down, and the other horses also were within the the house lot. For several days after that, the defendant never thought of his being shot, but supposed some other horse had kicked him. That some two or three days after the horse was found in that condition, he was considered incurable, and was killed by defendant and his leg cut off, when a leaden ball, in a flattened and mashed condition, was taken out of his leg, and that said ball would run about sixty balls to the bar of lead. That before the horse was killed, plaintiff Abner was there and assisted defendant in working on the horse. That plaintiff and defendant had a falling out after the horse was hurt, and before he was killed by defendant, in reference to other matters, and at that time, plaintiff was not suspected in the least of injuring defendant's horse.

12

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To fix the guilt of injuring said horse upon plaintiff, defendant introduced a witness of the name of Riddle, who swore that she was at plaintiff Abner's house the night defendant's horse was injured, and that plaintiff Abner, some time after dark, took down his gun, and together with his son William, went out, and that a voice was heard at the fence before said Abner went out, hallooing to him, and that said Abner had but the one gun.

15

That when said Abner went out, witness Riddle said to him, "If you shoot anything, shoot a witch," and that said plaintiffs Abuer and William, came back some time in the night—when—she would not pretend to say ; and she asked him if he had shot a witch, and said Abner replied that he had shot a witch in the fore-leg and it had run like hell. That plaintiff Abner and defendant lived about a mile or a mile and a half apart, and that witness heard a gun fire sometime in the night, over back of the field. Witness further stated, on a question put to her, for the express purpose of impeaching her, that she had never said anything to the contrary.

16

17

The defendant also proved by other witnesses that plaintiff Abner and defendant had talked considerably about one another, for several years previously, and that Abner said that defendant Chapman was a lazy man and made his living by keeping a stable horse, and that defendant would be as poor a man as he, (Abner) was, in three years, which statement was made about a year before the horse was injured; but that defendant and plaintiff neighbored with each other, and that plaintiff Abner rented land of defendant the season before the horse was hurt.

18

19

Defendant, by a witness by the name of Wilson, proved that plaintiff Abner, when he was arrested for the supposed killing of said horse, offered witness $35 to swear that he (Abner) was at some certain place the night the horse was injured; and another, named Poplin, swore that he heard plaintiff Abner offer Scott $25 if he would take said witness Riddle, away, so that she could not swear against him in this case.

20

Defendant also proved by a witness, by the name of Leonard, that plaintiff William said, shortly after the horse was dead, if defendant had not acted as he did with his father, Abner, his horse would now be alive.

21

[8475-64]

17-23-43-44=50=55=51=67=58=77=64

Defendant also proved by another witness, that plaintiff Shadoen, when in custody for the supposed shooting of said horse, said that if defendant had not put a deceased mare upon his father, his horse would still have been living.

Defendant also proved by Mrs. Stilley, that after defendant's horse was hurt, plaintiff Abner came to her house and said, "I suppose I have killed Chapman's horse, and I intend to have a honorable discharge from that, the same as I got when I came from Mexico." ~~Also that plaintiff Abner, in the same conversation~~, ~~bitterly denied killing defendant's horse~~.

Defendant also proved by Mrs. Marks, that plaintiff Abner said, after defendant's horse was hurt, that either he, plaintiff or defendant, Chapman, would be broke up; and also by another witness, that plaintiff Abner sent word to plaintiff Shadoen, after the horse got hurt, that he wanted to see said Shadoen, to learn him something. That said Shadoen went over, and when he came back, said that defendant had been accusing plaintiffs with killing said horse, and that they had better be careful.

On the trial, John Chapman, a brother of defendant, produced a bullet, flattened and mashed, which he said was the bullet, taken from the horse's leg.

Which was all the evidence, substantially, of defendant in the case.

In the part plaintiffs, Wiley Scott stated that he never had been offered $25 by plaintiff Abner, to put said witness Riddle out of the way, or any sum whatever, but he did hear said Abner say that he wouldn't have said witness away from said trial for $50, and that all he was afraid of was defendant Chapman's influence over her.

Plaintiff introduced Joseph Williams, and other witnesses to impeach said witness, Riddle, by contradicting her, and for that purpose asked said Williams and other witnesses, in a leading form and in as direct a manner as they were put to the witnesses of defendant, on the cross-examination, as to what said witness, Caroline Riddle, should have stated to them, about said Abner's going out, and saying he had shot a witch in the fore leg; but to this the defendant objected and the objection was sustained by the court—to which plaintiff then and there excepted.

Deft ~~Plaintiff~~ also, on the examination, in chief attempted to prove that after the horse was killed, experiments were made on the gate, in the presence of a witness, who testified, to that effect for him, to which plaintiff objected, because it was done after the horse was injured, and after plaintiff Abner was accused by defendant of shooting the horse, which objection the court overruled, and the plaintiff at the time excepted.

1 Mark 213
Wharton 978

Plaintiffs also attempted to impeach the witness Wilson, in the same way as Caroline Riddle, to which defendant objected, and the objection was sustained, and plaintiffs excepted at the time.

Plaintiffs to impeach John Leonard, another witness, asked him if he had not been in jail for crime, in Clinton county, and broke jail, to which defendant objected, and the objection was sustained, and the plaintiffs excepted at the time. The plaintiffs then asked said ~~Leonard~~ Wilson, if he had not frequently changed his residence, and whether he had not gone by a different name at every place, to which the defendant objected, and the objection was sustained by the court, and plaintiffs excepted at the time. Plaintiffs then asked a witness if he was acquainted with the general character of John Leonard for truthfulness and veracity in the neighborhood in which he lived, to which witness replied that he was. Plaintiff then asked witness if his general character was good or bad, to which he replied that it was bad. Plaintiffs then asked witness if from his general character, he would believe him upon oath; to which the defendant objected, the objection was sustained, and plaintiffs excepted.

The counsel for the defendant then asked the court for several instructions, which were given, to the giving of which plaintiffs excepted at the time.—Instructions were also asked on behalf of plaintiffs, some of which were given and others refused, to the refusal of the which, on the part of the court, the plaintiffs then and there excepted.

Plaintiffs also, during the progress of the trial, on behalf of plaintiff Shadoen, proved that he, Shadoen, was at the house of another man, under three miles off, from Sunday night before Christmas, 1856, every night till Wednesday morning; which was about all the evidence on behalf of planitiffs, permitted to go to the jury, under ruling of the court, most, if not all the evidence of the plaintiffs being excluded from the jury, under the ruling of the court, with the exception of the evidence of one Starricks, who said he had known Caroline Riddle, and her character for truthfulness, amongst her neighbors, for five years, and that her general character was bad; but the court would not allow plaintiffs to ask said witness whether he would believe her upon oath or not. Jacob aught was also Called by plffs to impeach sd Leonard by Contradicting him

30

Allen for Dft.

1 Greenlf § 461 & note 1 } Cannot ask the
1 Stark 211 Note 1 } impeaching witness if he
would believe the impeached
witness' oath

11 Humph 556. They did not ask him when &
where she had said so.

Nelson

9 Humph 411 Impeach
4 Mend 258
16 Ohio 338

1 Greenlf § 456 } Forgiven
2 Phil 427
Wharton 877

31 to 33 The instructions that were refused by the court, and to which refusal exceptions were taken, were principally in regard to the effect of circumstancial evidence in a case of this kind, which the court refused on the ground that instructions asked for were only applicable to criminal cases, and there was a distinction between civil and criminal cases.

34 to 37 The instructions given and withheld by the court are contained at lenght in the bill of exceptions.

A verdict was returned for defendant, who was plaintiff in the court below, for $500. Whereupon a motion was made for a new trial and in arrest of judgement, for the following reasons: 1st. Because the verdict was contrary to law. 2nd. Because the verdict was contrary to law and evidence. 3d, Because the verdict was contrary to evidence. 4th. Because the court refused to allow proper question, and allowed improper questions to be asked of the witnesses adduced on said trial. 5th. Because the court excluded proper testimony and allowed improper testimony to go to the jury. 6th. Because the court refused to allow proper questions to be put to the witnesses called to impeach on behalf of the plaintiffs. 7th. Because the court gave improper instructions on behalf of defendant, and refused proper instructions on behalf of plaintiffs. 8th. Because the plaintiffs were surprised on the trial, by the production of a bullet before the jury, the reasons of which surprise on behalf of the plaintiffs, are contained in an affidavit. 9th. There is no evidence to warrant jury in judging any or either of defendants guilty, embodied in the bill of exceptions. Which motion for a new trial the court overruled and rendered judgment on the verdict, whereupon the defendants in the court below, prosecute their writ of error to this court, and assign for error the objections taken to the verdict, for a new trial and in arrest of judgment, as above stated, and on those grounds seek to reverse the judgment of the court below.

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LOGAN, DUFF & NELSON, for Pl'ffs. in Error.

[8475-46]

27

Abner Eason,
William Eason &
John W. Shadowen
Plaintiffs in Error
vs
Daniel Chapman
Deft in Error

Abstracts -
Furnished by Pltffs

7/125
178
3
43158

Filed Nov. 2d 1858
N. Johnston Clk

Daniel Chapman
vs
Abner Eason, William
Eason & Wesley Chadowen

Trespass
September Term
Franklin Circuit
Court 1857
Judgment in favor
of the plaintiffs and
against defendants for
$500 00/100 & Costs of Suit.

State of Illinois
Franklin County

I Samuel R Harrison
clerk of the Circuit Court
in and for the County and State aforesaid
do hereby Certify, that at the September
term 1857 of the Franklin Circuit Court, in
the above Styled Cause Wherein Daniel Chap-
man was plaintiff and Abner Eason, Willi-
am Eason, and Wesley Chadowen were defend-
ants, judgment was rendered in favor
of the plaintiff and against the said
defendants for the sum of five hundred dol-
lars and Costs of suit, from which jud-
gment the defendants then and there
prayed an appeal, which was granted
and which said appeal was perfected
by the filing of a bond by them within
the time allowed by the Court for that pur-
pose, whereby the judgment of said Court
in said Cause was Suspended

In Testimony Whereof I
have hereunto set my hand
and affixed the seal of office
at Benton this 1st day of
December 1857

S R Harrison Clk

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[847567]

77.
27

Abner Eason, William Eason and Wesley Chadowens

vs

Daniel Chapman

Appeal from Franklin

84.75

Dismissed – 5 percent Damages – Dec. 2d 1857

Filed 2d Dec. 1857.
N. Johnston Clk

ABNER EASON, WM. EASON AND JOHN W. SHAODEN, Pl'ffs. in Error,

VS

DANIEL CHAPMAN, Deffendant in Error.

In the Supreme Court of Illinois, 1st Grand Division, Nov. Term, A. D. 1857

ERROR TO FRANKLIN.

ABSTRACT OF PLAINTIFF'S CASE.

Page 1 to 2

Daniel Chapman, the Defendant, commenced an action of tresspass against the Plaintiffs for the supposed killing of a certain stable horse, belonging to the def't., which was tried at the Fall term of the Franklin Circuit Court, A. D. 1857, before Parish Judge, and a jury. Plaintiff's pleaded the general issue; verdict for plaintiffs in the Court below for $500.

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The bill of exceptions filed in this cause by plaintiffs, shows that defendant owned a stable horse worth $500 to $1000, which horse, on the night of Monday, preceeding Christmas day of the year 1856, well in the stable lot of def't., which was staked and rid'red, and that there was a stable in said lot, the door of which was left open so that the horse could pass in and out. That said horse was rather wild, and ungovernable, and that there was a gate from the stable lot to the house lot, which gate was very strong, and when shut the latch let into a post, and to be raised when opened and shut, and was hard to open or shut, and the night of Monday aforesaid, about dusk, the horse was well, in the lot. That the fence around the house lot was low, and there was a field immediately back of the house lot, where defendant's other horses usually ran. That about 11 o'clock at night there was a noise heard of horses fighting within the house lot. The defendant owned two dogs, which were watchful and were outside of defendant's house, somewhere in the lot, and were not heard to bark, and no gun was heard that night. That one of the horses in the field was a large horse and had a shoe on one hind foot. Next morning the fence of the stable lot, close to the gate was down, and the gate was open, and the stable horse was found near the door of the house, with his fore leg broken and hanging down, and the other horses also were within the the house lot. For several days after that, the defendant never thought of his being shot, but supposed some other horse had kicked him. That some two or three days after the horse was found in that condition, he was considered incurable, and was killed by defendant and his leg cut off, when a leaden ball, in a flattened and mashed condition, was taken out of his leg, and that said ball would run about sixty balls to the bar of lead. That before the horse was killed, plaintiff Abner was there and assisted defendant in working on the horse. That plaintiff and defendant had a falling out after the horse was hurt, and before he was killed by defendant, in reference to other matters, and at that time, plaintiff was not suspected in the least of injuring defendant's horse.

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To fix the guilt of injuring said horse upon plaintiff, defendant introduced a witness of the name of Riddle, who swore that she was at plaintiff Abner's house the night defendant's horse was injured, and that plaintiff Abner, some time after dark, took down his gun, and together with his son William, went out, and that a voice was heard at the fence before said Abner went out, hallooing to him, and that said Abner had but the one gun.

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That when said Abner went out, witness Riddle said to him, "If you shoot anything, shoot a witch," and that said plaintiffs Abner and William, came back some time in the night—when—she would not pretend to say; and she asked him if he had shot a witch, and said Abner replied that he had shot a witch in the fore-leg and it had run like hell. That plaintiff Abner and defendant lived about a mile or a mile and a half apart, and that witness heard a gun fire sometime in the night, over back of the field. Witness further stated, on a question put to her, for the express purpose of impeaching her, that she had never said anything to the contrary.

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The defendant also proved by other witnesses that plaintiff Abner and defendant had talked considerably about one another, for several years previously, and that Abner said that defendant Chapman was a lazy man and made his living by keeping a stable horse, and that defendant would be as poor a man as he, (Abner) was, in three years, which statement was made about a year before the horse was injured; but that defendant and plaintiff neighbored with each other, and that plaintiff Abner rented land of defendant the season before the horse was hurt.

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Defendant, by a witness by the name of Wilson, proved that plaintiff Abner, when he was arrested for the supposed killing of said horse, offered witness $35 to swear that he (Abner) was at some certain place the night the horse was injured; and another, named Poplin, swore that he heard plaintiff Abner offer Scott $25 if he would take said witness Riddle, away, so that she could not swear against him in this case.

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Defendant also proved by a witness, by the name of Leonard, that plaintiff William said, shortly after the horse was dead, if defendant had not acted as he did with his father, Abner, his horse would now be alive.

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[8475-68]

Defendant also proved by another witness, that plaintiff Shadoen, when in custody for the supposed shooting of said horse, said that if defendant had not put a deceased mare upon his father, his horse would still have been living.

Defendant also proved by Mrs. Stilley, that after defendant's horse was hurt, plaintiff Abner came to her house and said, "I suppose I have killed Chapman's horse, and I intend to have a honorable discharge from that, the same as I got when I came from Mexico." ~~Also that plaintiff Abner, in the same conversation, bitterly denied killing defendant's horse.~~

Defendant also proved by Mrs. Marks, that plaintiff Abner said, after defendant's horse was hurt, that either he, plaintiff or defendant, Chapman, would be broke up; and also by another witness, that plaintiff Abner sent word to plaintiff Shadoen, after the horse got hurt, that he wanted to see said Shadoen, to learn him something. That said Shadoen went over, and when he came back, said that defendant had been accusing plaintiffs with killing said horse, and that they had better be careful.

On the trial, John Chapman, a brother of defendant, produced a bullet, flattened and mashed, which he said was the bullet, taken from the horse's leg.

Which was all the evidence, substantially, of defendant in the case.

In the part plaintiffs, Wiley Scott stated that he never had been offered $25 by plaintiff Abner, to put said witness Riddle out of the way, or any sum whatever, but he did hear said Abner say that he wouldn't have said witness away from said trial for $50, and that all he was afraid of was defendant Chapman's influence over her.

Plaintiff introduced Joseph Williams, and other witnesses to impeach said witness, Riddle, by contradicting her, and for that purpose asked said Williams and other witnesses, in a leading form and in as direct a manner as they were put to the witnesses of defendant, on the cross-examination, as to what said witness, Caroline Riddle, should have stated to them, about said Abner's going out, and saying he had shot a witch in the fore leg; but to this the defendant objected and the objection was sustained by the court—to which plaintiff then and there excepted.

Plaintiff also, on the examination, in chief attempted to prove that after the horse was killed, experiments were made on the gate, in the presence of a witness, who testified, to that effect for him, to which plaintiff objected, because it was done after the horse was injured, and after plaintiff Abner was accused by defendant of shooting the horse, which objection the court overruled, and the plaintiff at the time excepted.

Plaintiffs also attempted to impeach the witness Wilson, in the same way as Caroline Riddle, to which defendant objected, and the objection was sustained, and plaintiffs excepted at the time.

Plaintiffs to impeach John Leonard, another witness, asked him if he had not been in jail for crime, in Clinton county, and broke jail, to which defendant objected, and the objection was sustained, and the plaintiffs excepted at the time. The plaintiffs then asked said ~~Leonard~~ witness, if he had not frequently changed his residence, and whether he had not gone by a different name at every place, to which the defendant objected, and the objection was sustained by the court, and plaintiffs excepted at the time. Plaintiffs then asked a witness if he was acquainted with the general character of John Leonard for truthfulness and veracity in the neighborhood in which he lived, to which witness replied that he was. Plaintiff then asked witness if his general character was good or bad, to which he replied that it was bad. Plaintiffs then asked witness if from his general character, he would believe him upon oath; to which the defendant objected, the objection was sustained, and plaintiffs excepted.

The counsel for the defendant then asked the court for several instructions, which were given, to the giving of which plaintiffs excepted at the time.—Instructions were also asked on behalf of plaintiffs, some of which were given and others refused, to the refusal of the which, on the part of the court, the plaintiffs then and there excepted.

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[8475-69]

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The instructions that were refused by the court, and to which refusal exceptions were taken, were principally in regard to the effect of circumstancial evidence in a case of this kind, which the court refused on the ground that instructions asked for were only applicable to criminal cases, and there was a distinction between civil and criminal cases.

The instructions given and withheld by the court are contained at lenght in the bill of exceptions.

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LOGAN, DUFF & NELSON, for Pl'ffs. in Error.

[8475-70]

27

Abner Eason,
William Eason &
John W. Shadowen
Plffs in Error

vs

Daniel Chapman
Deft in Error

Abstract furnished
by Plaintiff in error.

8475

Filed Nov. 2. 1858.
N. Johnston Clk

27

Eason

vs

Chapman Et al

8475